



STATE OF WASHINGTON  
WASHINGTON STATE BOARD OF HEALTH  
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October 9, 2002

**TO:** Washington State Board of Health Members

**FROM:** Tom Locke, Board Member

**RE: UPDATE ON PROGRESS OF EMERGENCY POWERS RULE REVIEW**

**Background and Summary**

At its September 11 meeting, the Board held a hearing on a proposed revision to chapters 246-100 and 246-101 WAC that would establish procedures for isolation and quarantine. It would also iterate in rule the enforceability of a detention order issued by a local health officer. At the conclusion of that hearing, Chair Lake asked about next steps. I replied that we would be coming back with a revised draft for a second hearing and possible adoption, and that that hearing could occur as early as October. The Chair said she would look forward to further discussion at the October meeting. The purpose of this agenda item is to inform the Board about the progress of the rule making effort.

Since the September meeting, Craig McLaughlin has been working with the Board's counsel and me to produce another iteration of the rule that reflects feedback received during the comment period and at the hearing. That process is almost complete. Rather than try to get a draft ready for an October hearing, however, we have elected to republish the draft rule in the *Washington State Register*. The *WSR* publication schedule necessitates that we defer the second hearing until December.

There are several changes to the next draft, and a list of some of them attached. While the basic framework of the process laid out in the rule will not change, there are three aspects to the latest edits that together seemed significant enough to warrant republication:

1. The new sections have been reorganized to do a better job of differentiating and defining the various hearing processes. This reorganization does not change the sequence of steps that would be required, but the edits may give the appearance of being a substantive change.
2. The burden of proof has changed. The burden of proof for court proceedings under the version of the rule heard in September was "preponderance of evidence." In the draft now being finalized, hearings to hold someone for the initial ten days would require meeting a lower standard: "reasonable basis." Detaining someone for up to 30 days, however, would require meeting a higher standard: "clear, cogent, and convincing."

3. The latest draft includes the right to a government-funded attorney for indigents. The previous draft included a right to counsel but contained no language about government-funded representation. The indigency standard may actually lower state and local fiscal exposure, because without it the courts might determine that right to counsel implies a right to government-funded counsel for anyone who is detained and requests government-funded representation, regardless of whether they establish financial need.

I anticipate filing a revised CR-102 with the new draft rule in the next couple weeks and have asked staff to make sure that Board members receive copies to review several weeks in advance of our December meeting.

**Recommended Board Action**

**None at this time.**

Attachment